YAT YUEN HONG CO. LTD. v. TURQUAND, YOUNGS & CO.

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. & Buttrose J.) August 7, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 18 of 1967]

Landlord and Tenant — Agreement to surrender tenancy on landlords' agreement to pay valuable consideration — Premiums on Leases Ordinance (Cap. 253), s. 2(1) — Presentation of agreement for inspection to Chief Assessor after 33 days — Whether "forthwith" — Local Government Integration Ordinance, 1963, s. 3(2).

This was an appeal from the decision of Ambrose J. ([1967] 1 M.L.J. 291). The appellants, owners of certain rent controlled premises of which the respondents were tenants, being anxious to obtain vacant possession thereof, on February 17, 1966, entered into an agreement with the respondents, *inter alia*, that they (the tenants) would vacate the premises on March 7, 1966 and in consideration thereof the landlords would pay $60,000 on that date before possession and $50,000 by 5 equal monthly instalments of $10,000. The appellants unilaterally repudiated the agreement on March 5, 1966. In consequence the respondents brought an action against the appellants on March 22, 1966 for the $60,000 then due under the agreement of February 17. The appellants contended that the agreement was unlawful by reason of non-compliance with the provisions of section 2(1) of the Premiums on Leases Ordinance (Cap. 253) in that it was not forthwith presented for inspection to the City Council or the successor thereof Subsection (1) of section 2 of the Ordinance provides:—

> "It shall be unlawful for any landlord, or agent of a landlord as a condition of the grant, renewal or continuance of any lease or agreement for the tenancy of any building or part of a building, or for any person as a condition of giving up possession of any building, or part of the building to require the giving of any consideration whatsoever whether with or without reservation of rent unless —
>
> (a) particulars of such consideration and of such building or part of a building are furnished in a written document; and
>
> (b) such document is forthwith presented for inspection by the landlord or his agent or any person giving up possession as aforesaid to the City Council if the said building or part of a building is situated within the limits of the City or to the Rural Board if the said building or part of a building is situated within the Rural Board area."

This issue together with another point of law raised by the defence was tried before Ambrose J. who held that the respondents had not been guilty of any unlawful act under the Premiums on Leases Ordinance. The agreement of February 17 was sent by the respondents' solicitors to the Chief Assessor, Planning Department, for inspection on March 21.

The question to be decided in this appeal was whether or not the respondents by presenting the agreement to the City Assessor for inspection 33 days after it was made had presented it "forthwith" within the meaning of section 2(1). The trial judge held that on the true construction of the subsection the duty to present a document for inspection arises only on the giving up of possession and as possession of the premises in question had not yet been given up by the respondents the duty to present the agreement for inspection had not yet arisen. He held furthermore that it was impossible for the respondents to comply with the requirements of the subsection because there was no statutory provision for the function of receiving and inspecting the agreement under the subsection to be exercised by anyone from September 1, 1963 when the Local Government Integration Ordinance, 1963 came into operation.

Held, allowing the appeal: (1) the words "any person giving up possession" in condition (b) of the subsection are words of description to describe the person who is in possession who requires the giving of consideration as a condition of his giving up possession. The duty is by condition (b) imposed on him to forthwith present the document for inspection;

(2) the word "forthwith" means "as soon as practicable" and "as soon as is reasonably possible". A presentation after an interval of 33 days on the true construction of the subsection, could not in the circumstances of this case be said to have been made as soon as is reasonably possible;

(3) by virtue of section 3(2) of the Local Government Integration Ordinance, 1963, any reference to the City Council in the Premiums on Leases Ordinance must be construed as a reference to the Government. The respondents must therefore, to comply with condition (b) of section 2(1) of the Premiums on Leases Ordinance, forthwith present the agreement for inspection to the Government. Accordingly it was not impossible for the respondents to comply with condition (b).

FEDERAL COURT.

A. P. Godwin for the appellants.

K. A. O'Connor for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (Singapore): The appellants are the owners and landlords of a piece of property known as No. 1 Bishopsgate Singapore of which the respondents are the tenants. No. 1 Bishopsgate is subject to the provisions of the Control of Rent Ordinance (Chapter 242).

The appellants were apparently anxious to obtain vacant possession of their own property and on 17th February 1966 they entered into an agreement with the respondents the material terms of which were as follows: —

"17th February, 1966.

No. 1, Bishopsgate

Deeds of agreement

1. Vacant Possession: 7th March, 1966.
2. Compensation: $110,000 payable

(a) $60,000 on 7th March 1966 before possession.

(b) $50,000 by five equal monthly instalments of $10,000 each payable on the last day of each succeeding month. 1st payment 7th April 1966.

(c) Interest payable on balance from time to time due at 8% per annum at the end of each month at same time as the abovementioned instalments.

(d) Bankers' guarantee to be given on 7th March, 1966 guaranteeing payment of (b) and (c).

(e) Drew & Napier's legal costs to be paid by Yat Yuen Hong Co. Ltd."

On 5th March 1966, two days before the respondents were due to hand over vacant possession to the appellants and two days before the appellants were due to pay the agreed first instalment of $60,000, the appellants unilaterally repudiated the agreement. In consequence the respondents commenced an action on the 22nd March 1966 in the High Court of Singapore against the appellants for the $60,000 then due under the agreement of the 17th February 1966.

The appellants' defence, *inter alia*, was that the agreement was unlawful by reason of non-compliance with the provisions of section 2(1) of the Premiums on Leases Ordinance (Chapter 253) in that it was not forthwith presented for inspection to the City Council or the successors thereof.

This issue together with another point of law raised by the defence was ordered to be tried before the trial of the action and in the result Ambrose J. who heard the preliminary issue held that the respondents had not been guilty of any unlawful act under section 2(1) of the Premiums on Leases Ordinance. The appellants now appeal.

Section 2(1) of the Premiums on Leases Ordinance provides as follows: —

"It shall be unlawful for any landlord, or agent of a landlord as a condition of the grant, renewal or continuance of any lease or agreement for the tenancy of any building or part of a building, or for any person as a condition of giving up possession of any building, or part of the building to require the giving of any consideration whatsoever whether with or without reservation of rent unless —

(a) particulars of such consideration and of such building or part of a building are furnished in a written document: and

(b) such document is forthwith presented for inspection by the landlord or his agent or any person giving up possession as aforesaid to the City Council if the said building or part of a building is situated within the limits of the City or to the Rural Board if the said building or part of a building is situated within the Rural Board area."

The agreement of the 17th February 1966 was sent by the respondents' solicitors addressed to the Chief Assessor, Planning Department, City Hall, Singapore on the 21st March accompanied by a letter in the following terms: —

"Dear Sir,

re: Premiums on Leases Ordinance:
No. 1 Bishopsgate

We act for the tenants of the above premises, Messrs. Turquand, Youngs & Co. Section 2 of the Premiums on Leases Ordinance (Cap. 253) appears to require our clients to present to you for inspection a document whereby they have agreed to give up possession of these premises in return for a money payment. We enclose the original and a photostat of the agreement in question dated 17th February 1966, and shall be obliged if you will acknowledge receipt, and return the original to bearer."

The question to be decided in this appeal is whether or not the respondents by presenting the agreement to the City Assessor for inspection thirty three days after it was made had presented it "forthwith" within the meaning of section 2(1).

The trial judge held that on the true construction of the sub-section the duty to present a document for inspection arises only on the giving up of possession and as possession of the premises in question had not yet been given up by the respondents the duty to present the agreement for inspection had not yet arisen. He held furthermore that it was impossible for the respondents to comply with the requirements of the sub-section because there was no statutory provision for the function of receiving and inspecting the agreement under the sub-section to be exercised by anyone from the 1st September 1963 when the Local Government Integration Ordinance 1963 came into operation.

On the first point the learned judge, having laid down that the meaning of a statute is primarily to be sought in the words used in the statute, which must, if they are plain and unambiguous, be applied as they stand, would appear to have come to the conclusion that the words "any person giving up possession" in condition (b) of the sub-section are plain and unambiguous and bear the meaning "any person who has given up possession". With respect while I agree with the learned judge's view of the law applicable, I am unable to agree with his view of the meaning of the words in question. In my opinion, the words "any person giving up possession" in condition (b) are words of description to describe the person who is in possession who requires the giving of consideration as a condition of his giving up possession. The duty is by condition (b) imposed on him to forthwith present the document for inspection.

The question than arises whether, by presenting to the City Council the document thirty three days after its making, the respondents had "forthwith" presented it within the meaning of section 2(1). The word "forthwith" has been held to mean "as soon as practicable" and "as soon as is reasonably possible". The learned judge although he was of the opinion that "forthwith" meant "as soon as practicable" made no finding whether the presentation of the agreement in question thirty three days after it was made was a "forthwith" presentation. In my judgment the respondents had clearly not presented it "forthwith", whether the word meant "immediately" or "at once" or "without delay or interval" which are the dictionary meanings or whether the word meant "as soon as practicable" or "as soon as is reasonably possible". The agreement had undoubtedly not been presented for inspection immediately or at once or without delay or interval. A presentation after an interval of thirty three days, on the true construction of the sub-section, cannot in the circumstances of this case be said to have been made as soon as practicable or as soon as is reasonably possible.

On the second point, I am also unable to agree with the conclusion arrived at by the learned judge. Section 6 of the City Council (Suspension and Transfer of Functions) Ordinance 1959 provided for the transfer of all the functions of the City Council to the Government of Singapore. This Ordinance was repealed by the Local Government Integration Ordinance 1963.

The learned judge took the view that the Local Government Integration Ordinance 1963 did not assign the function of receiving and inspecting the documents referred to in section 2(1) of the Premiums on Leases Ordinance to any one and that therefore, as the 1963 ordinance repealed the City Council (Suspension and Transfer of Functions) Ordinance 1959, there was no longer any statutory provision for the function of the City Council under section 2(1) of the Premiums on Leases Ordinance to be exercised by any one as from the 1st September 1963, when the Local Government Integration Ordinance 1963 came into operation. While there was no provision in the 1963 ordinance which provides specifically for the function of the City Council under section 2(1) of the Premiums on Leases Ordinance to be exercised by someone, it does not necessarily follow, as the learned judge held, that the 1963 ordinance did not provide for the consequences following upon its repeal of the City Council (Suspension and Transfer of Functions) Ordinance 1959.

In my opinion it did by section 3(2) which provides as follows: —

"In any written law and in any document whatsoever, unless the context otherwise requires, any reference to a local authority or the City Council or the Rural Board or any officer thereof, shall be construed as a reference to the Government, Minister or public officer for the time being, under and by virtue of this Ordinance, discharging the functions performed by such local authority, the City Council, Rural Board or any officer thereof, as the case may be, prior to the coming into operation of this Ordinance."

By virtue of this sub-section, any reference to the City Council in the Premiums on Leases Ordinance must be construed as a reference to the Government. The respondents must therefore, to comply with condition (b) of section 2(1) of the Premiums on Leases Ordinance, forthwith present the agreement for inspection to the Government.

Accordingly, in my judgment it was not impossible for the respondents to comply with condition (b). They could and should have complied with it by forthwith presenting the agreement to the Government. In practice the presentation would be made to the appropriate Ministry or, to those more familiar with governmental procedures, the presentation would be made to the Chief Assessor which was in fact done by the respondents' solicitors in the present case. Unfortunately for the respondents, the presentation was not made forthwith within the meaning of condition (b) and accordingly I would allow the appeal with costs here and below.

Tan Ah Tah F.J. and **Buttrose J.** concurred.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

HIGHLANDS MALAYA PLANTATIONS LTD. v. COLLECTOR OF LAND REVENUE, KLANG

[O.C.J. (Raja Azlan Shah J.) April 4, 1968]

[Kuala Lumpur — Civil Application No. 5 of 1967]

Land Laws — Acquisition of land — Claim for compensation — Application for extension of time — Limitation — Land Acquisition Act, 1960, s. 36 & 1st Schedule cl. 4(b).

One of the alternatives put forward by the applicant in support of his motion read: "That the applicant be granted extension of time in which to submit a claim for compensation up to the day following the date on which the Collector of Land Revenue received the applicant's valuer's letter dated 18th June 1964." The collector had adjourned the proceedings on June 25, 1963 and the award was made on May 11, 1964 on the basis that the applicant had omitted to make a claim for compensation.

Held: it is for the land acquisition judge to decide whether the omission to submit the claim for compensation was founded on sufficient reasons. Under the circumstances of the case the motion could not be entertained.

MOTION.

S. D. K. Peddie for the applicants.

Haji Mohamed Azmi bin Dato Haji Kamaruddin (Legal Adviser, Selangor) for the respondent.

Raja Azlan Shah J.: Of the three alternatives put forward by the applicants in support of his motion, it is sufficient for me to state that only the last one merits consideration. It reads:

"That the applicant be granted extension of time in which to submit a claim for compensation up to the day following the date on which the Collector of Land Revenue received the applicant's valuer's letter dated 18th June 1964".

It is clear that the collector adjourned the proceeding on 25th June 1963. The award was made on 11th May 1964 on the basis that the applicant had omitted to make a claim for compensation.

Briefly, the applicants' explanation for the omission is this: confusion had arisen due to the fact that the land gazetted for acquisition in connection with the Damansara water supply scheme had also been gazetted for acquisition for the purpose of a new town, and as such it was not possible to formulate a claim for compensation at that stage because it was not possible to ascertain whether the claim should be submitted in connection with the water supply scheme or in connection with the new town. That proposition was contained in a letter dated 14th April 1964 written by the applicants' valuer to the collector.

That may afford sufficient reason for such omission but, in my opinion, that is a matter for the land acquisition judge to decide. That is clear from the wording of clause 4(b) of the First Schedule which prescribes the amount of compensation which the court can award when deciding a reference made to it under section 36. If the court should then decide that the omission to submit the claim is founded on sufficient reason, it has power to enhance the amount of compensation (see 5th edn. *Sanjiva Row* on Land Acquisition and Compensation, at p. 638).

In the circumstances I do not feel disposed to entertain the motion. It is accordingly dismissed. There will be no order as to costs.

Motion dismissed.

Solicitors: *Skrine & Co.*

GOH BENG SENG v. DOL BIN DOLAH

[O.C.J. (Sharma J.) June 26, 1969]

[Malacca — Civil Suit No. 201 of 1966]

Negligence — Road accident — Driving at speed — Negotiating bend — Resting arm on car window while driving.

Damages — Personal Injuries — Refusal to undergo a second operation — Whether acting unreasonably.

Damages — Personal injuries — Assessment — Method of — Desirability of a lump sum award.

Evidence — Inadmissible evidence — Duty of court to disallow — Statement to police — Criminal Procedure Code (Cap. 21), s. 124 and Evidence Ordinance, 1950, s. 155.

Road Traffic — Driving on public road — Duty to others.

At about 1.30 a.m. on April 19, 1966 there was an accident at 13½ milestone Machap Baru/Durian Tunggal Road involving the plaintiff's car and a lorry driven by the defendant. The facts were: (a) the two vehicles were travelling